Remarks

Claims 1-22 are pending in the instant application. In the Office Action mailed December 30, 2003, the Examiner rejects claims 1-22. Based on the remarks made herein, Applicants respectfully request that the rejections be withdrawn and that the application be passed to allowance.

Rejection of Claims 1-22 as Obvious in View of Klofta and Further in View of Koenig.

In the Office Action mailed December 30, 2003, the Examiner rejects claims 1-22 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/007307 to Klofta et al. (hereinafter "Klofta") in view of U.S. Patent Application Publication No. 2003/0118475 to Koenig et al. (hereinafter "Koenig"). Applicants respectfully traverse the rejection. Applicants respectfully maintain that the rejection is improper in view of MPEP 706.02(l)(1).

Koenig is prior art with respect to the present rejection under 35 U.S.C. § 103(a) via 35 U.S.C. § 102(e). Specifically, the present application was filed on December 22, 2001 (that is, after November 29, 1999) and Koenig was filed on December 20, 2001 and published on June 26, 2003, thus indicating that Koenig publication is prior art under former 35 U.S.C. 103 via 35 U.S.C. § 102(e).

Therefore, Applicants maintain that Koenig is disqualified as prior art against the present application according to MPEP § 706.02(l)(1) because both are assigned to Kimberly-Clark Worldwide, Inc. Specifically, as set forth in the Amendment filed October 13, 2003, assignment of the present application was recorded on March 15, 2002 at Reel number 012728 and Frame number 0939. Similarly, the Assignment for Koenig has a recordation date of February 6, 2002 and can be found at Reel number 012586 and Frame number 0564. Copies of the Assignment and the "Notice of Recordation of Assignment Document" were provided in the Amendment filed October 13, 2003.

Nonetheless, on page 8 of the Office Action mailed December 30, 2003, the Examiner states that "[t]he applicant has provided a notice of recordation of assignment document showing that the Koenig reference is owned by the same person or subject to an obligation of assignment to the same person as of January 21, 2002. Since the instant application was filed on December 22, 2001, the examiner contends that the instant application and the Koenig reference were not owned by the same person or subject to an obligation of assignment to the sam person at the time the invention was made, thereby qualifying the Koenig reference as prior art against the claimed invention in view of MPEP § 706.02(l)(1)." Applicants disagree.

The below-signed attorney of record hereby makes a statement evidencing common ownership in accordance with MPEP § 706.02(l)(2) regarding Koenig and the present application:

STATEMENT OF COMMON OWNERSHIP

Application Serial No. 10/028,338 and Application Serial No. 10/029404 (which corresponds to U.S. Patent Application Publication No. 2003/0118475) were, at the time the invention of Application Serial No. 10/028,338 was made, owned by Kimberly-Clark Worldwide, Inc.

MPEP § 706.02(l)(2) states "This statement alone is sufficient evidence to disqualify Patent A from being used in a rejection under 35 U.S.C. 103(a) against the claims of Application X." Applicants respectfully request that the Examiner withdraw the rejections under §103(a) based on the McNichols patent.

Accordingly, based on MPEP § 706.02(l)(1) and MPEP § 706.02(l)(2), Applicants respectfully submit that the rejection under 35 U.S.C. § 103(a) in view of Koenig should be withdrawn. Based on the foregoing, Applicants are not responding at this time to the substantive portion of the Examiner's rejection and respectfully request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

In conclusion, and in view of the remarks set forth above, Applicants respectfully submit that the application and the claims are in condition for allowance and respectfully request favorable consideration and the timely allowance of pending claims 1-22. If any additional information is required, the Examiner is invited to contact the undersigned at (920) 721-3862.

The Commissioner is hereby authorized to charge any fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account.

Respectfully submitted,
EARL DAVID BROCK, ET AL.

By: _____
John L. Brodersen
Registration No.: 51,236

CERTIFICATE OF FACSIMILE TRANSMISSION

I, Barbara D. Miller, hereby certify that on March 26, 2004, this document is being sent by facsimile transmission addressed to Commissioner for Patents via facsimile number 703-872-9306.

By: _____
Barbara D. Miller

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